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and the Proposed Class in
Weiner v. Walmart.com USA LLC, et al.
Case No. 09-cv-00398 BZ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANDREA RESNICK, GARY BUNKER, JOHN HALEY, AMY LATHAM, ERIC ROSLANSKY, and KEVIN SIMPSON, on behalf of themselves and all others similarly situated, Plaintiffs, v. WALMART.COM USA LLC, WAL-MART STORES, INC., and NETFLIX, INC., Defendants.	Case No. 09-cv-00002 PJH ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED

Dockets.Justia.com

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

Pursuant to Local Rule 3-12, Plaintiff Michael Weiner respectfully submits this administrative motion to consider whether a case filed in this District, *Weiner v. Walmart.com USA LLC, et al.*, Case No. 09-00398 JCS ("Weiner") (filed January 28, 2009) should be related to another case filed in this District, *Resnick, et al. v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00002 PHJ ("Resnick") (filed January 2, 2009).

Pursuant to Local Rule 3-12(d)(2), Plaintiff states that *Weiner* involves the same Defendants as in *Resnick.* The cases involve similar factual allegations as both are proposed class actions on behalf of purchasers of online DVD rentals from Netflix, Inc. Both complaints are brought under sections 1 and 2 of the Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1-2, and sections 4 and 16 of the Clayton Antitrust Act of 1914, 15 U.S.C. §§ 15 and 29, for damages and injunctive relief against Defendants Netflix, Inc.,Wal-Mart Stores, Inc., and Walmart.com USA LLC.

Pursuant to Local Rule 3-12(a)(2), it appears likely that there will be duplication of labor and expense or the possibility of conflicting results if the cases are conducted before different Judges.

Given the similarities of these actions, assignment of these cases to a single Federal District Court Judge will conserve judicial resources and promote efficient determination of the actions while avoiding potentially conflicting results. Accordingly, Plaintiff Michael Weiner respectfully requests that the action entitled *Weiner v. Walmart.com USA LLC, et al.,* be deemed related to *Andrea Resnick, et al. v. Walmart.com USA LLC, et al.,* the first filed case in this District, which is presently assigned to the Honorable Phyllis J. Hamilton.

DATED: February 5, 2009

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Jeff D. Friedman
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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Jeff D. Friedman
JEFF D. FRIEDMAN

DECLARATION OF SERVICE

I, Pasha Durant, hereby certify that on this 5th day of February 2009, I caused a true and correct copy of the foregoing document to be served upon the agents for service of process for the parties listed below.

1. WALMART.COM USA LLC
   c/o CT Corporation System, Registered Agent for Service of Process for WAL-MART STORES, INC.
   818 West Seventh St.
   Los Angeles, CA 90017

2. WAL-MART STORES, INC.
   CT Corporation System, Registered Agent for Service of Process
   818 West Seventh St.
   Los Angeles, CA 90017

3. NETFLIX, INC.
   National Registered Agents, Inc., Registered Agent for Service of Process
   2875 Michelle Dr., Suite 100
   Irvine, CA 92606

/s/ Pasha Durant
PASHA DURANT

Mailing Information for a Case 3:09-cv-00002-PJH

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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